

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:14cv122**

<b>MICHAEL A. KITCHEN, et al.,</b>	)
	)
<b>Plaintiffs,</b>	)
	)
<b>v.</b>	)
	)
<b>SHAWN MILLER, et al.,</b>	)
	)
<b>Defendants.</b>	)
	)

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**ORDER**

Pending before the Court is the Motion to Compel [# 62]. Defendants move the Court to compel Plaintiff Michael Kitchen (“Plaintiff”) to provide responses to discovery requests. The Court **DENIES** the motion [# 62].

**I. Analysis**

Rule 37 of the Federal Rules of Civil Procedure does not specify a specific time limit for the filing of a motion to compel. See Fed. R. Civ. P. 37; PCS Phosphate Co. v. Norfolk Southern Corp., 238 F.R.D. 555, 558 (E.D.N.C. 2006). Absent a specific order from the Court in the scheduling order, a party must generally move to compel a party to comply with a discovery request or to compel a deposition prior to the close of discovery or the motion is untimely. See Days Inn Worldwide, Inc. v. Sonia Invs., 237 F.R.D. 395, 397-98 (N.D. Tex. 2006) (collecting cases); U.S. v. \$28,720.00 in United States Currency, No. 1:13cv106,

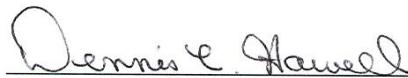
2014 WL 1570925, at \*1 (W.D.N.C. Apr. 17, 2014) (Howell, Mag. J.); Wellness Group, LLC v. King Bio, Inc., No. 1:12cv281, 2013 WL 5937722, at \*1 (W.D.N.C. Nov. 4, 2013) (Howell, Mag. J.); Murphy v. Auto Advantage, Inc., 2012 WL 28781, at \*1 (W.D.N.C. Jan. 5, 2012) (Howell, Mag. J.); Rudolph v. Buncombe Cnty Gov't, No. 1:10cv203, 2011 WL 5326187 (W.D.N.C. Nov. 4, 2011) (Howell, Mag. J.).

Discovery in this case closed June 1, 2016. As the Pretrial Order warned the parties, “[m]otions to compel must be filed within the discovery period or they may be deemed waived.” (Order, Feb. 3, 2014 at p. 6, ECF No. 43.) Defendants, however, waited until June 28, 2016, to file their Motion to Compel. Because Defendants failed to file their Motion to Compel within the discovery period, the motion is untimely, and the Court **DENIES** the motion.

## **II. Conclusion**

The Court **DENIES** the Motion to Compel [# 62].

Signed: July 12, 2016



Dennis L. Howell  
United States Magistrate Judge

